

Approved as Submitted: February 4, 2004

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – JANUARY 21, 2004**

CALL TO ORDER

Mayor/Chairperson Kennedy called the special meeting to order at 6:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Sellers, Tate and Mayor/Chairman Kennedy

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items.

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 4

2.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 215 Tennant Avenue, APN: 817-04-002
Negotiating Parties:
 For City: City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
 For Property Owners: Robert and Teresita Carrasco and Bruce Tichinin
Closed Session Topic/Under Negotiation: Price and Terms of Payment

3.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority: Government Code 54956.8
Property: 95 Tennant Avenue, APN: 817-04-006
Negotiating Parties:
 For City: City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
 For Property Owners: Marko and Klara Gera
Closed Session Topic/Under Negotiation: Price and Terms of Payment

4.

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Legal Authority:	Government Code 54956.8
Property:	145 Tennant Avenue, APN: 817-04-008
Negotiating Parties:	
For City:	City Manager, Director of Public Works, City Attorney, and Attorney Gale Connor
For Property Owners:	Joseph Hernandez, as trustee; et al
Closed Session Topic/Under Negotiation:	Price and Terms of Payment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comment being offered, the public comment was closed.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:05 p.m.

RECONVENE

Mayor/Chairperson Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, City Treasurer Mike Roorda led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Tate stated that he has been working on the library subcommittee but that he would not report on this subcommittee as it will be discussed later this evening under a separate agenda item. He also serves on the economic subcommittee. He noted that there is also an item on the agenda later this evening and that he will address the subcommittee at that time. He indicated that the Council held a goal setting retreat this past Friday and Saturday, indicating that it was a productive session. He said that there was a lot of concentration on the City's budget. He felt that everyone understands that the budget is one of the biggest concerns at any level of government today. He stated that the City is fortunate to be in a position that it has some reserves and that it was prudent in terms of building these reserves. He felt that the Council is prudent in attempting to reach a sustainable balanced budget by the

year 2007-2008. He indicated that the City has the luxury of using the City's reserves until that time but that the Council wants to get to a point where the City is not spending more than is being taken in. In order to balance a budget that is not balanced you either have to cut your spending or increase your income. He felt that the City has a good handle in terms of good forecasts and approaches that the Council is looking at to achieve a balanced budget. He said that cities and regional agencies have heard the City Manager's reports on some of the machinations that the City has gone through with the State in terms of backfill of the vehicle license fee (VLF), only to be taken away and then backfilled again. After the State reinstated the backfill, they went back to what it did approximately 10 years ago in terms of shifting education money that would come back to local governments. He stated that the City does not know what will happen in the election of March 2004 in terms of the \$15 billion bond the State is asking for. However, if the State does not get this bond measure passed, cities are fearful that the State will come looking for more from cities. He stated that the Council is working carefully and cautiously with staff to get to a responsible budget position. He cautioned that the Council does not have control of the actions that take place at the State level.

CITY MANAGER REPORT

City Manager Tewes reported that the Council directed that staff develop the tentative policy decision made at the retreat and bring it back to the Council for formal consideration at the February 18, 2004 meeting. At that time, staff will have the proposed goals that the Council discussed and will have the opportunity to formally adopt these goals as well as adopting a set of principals/guidelines to help staff as it prepares the budget for the succeeding year. He indicated that another prudent decision the Council made was to direct staff to test all domestic water wells for the presence of the contaminant perchlorate on a monthly basis. He reported that this month, none of the City's domestic wells had any detectable levels of perchlorate.

CITY ATTORNEY REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

OTHER REPORTS

City Treasurer Roorda presented the Quarterly Treasurer's Report. He reported on the state of the City's general fund, including the challenging decisions that will need to be made by the City the next few years to reach a balanced budget. He indicated that the City's revenue does not come in on an even fashion over the course of the year but tends to come in at an increasing level over the course of the year. He said that two of the largest contributors to the revenue source for the City are property taxes and sales tax. He indicated that the sales tax has not been as generous this year as it was in prior years. However, in the property tax area, the City has seen more increases than what was budgeted. Therefore, these two taxes offset each other's decline. In the motor vehicle fee area, the City has been in an environment where it started the year without the backfill from the State for the vehicle in lieu fees. There is a portion of this that will come back to the City, not in this current year, but in the next couple of years. Although the starting point appears to be a little bleak, once you understand some of the components and where the City is, the City will see a much better situation in relation to the budget by

the end of the year. In the expense area, he stated that City staff has done some work to reduce expenses below the budgeted levels. However, he noted that there is still some growth over the last year, but at a modest rate (e.g., less than 2%). He felt that with continued efforts, the City may see some additional benefits and close the gap between what is being seen in terms of revenue which is expected to improve from this point forward and the expense levels if they were to decline over the course of the year. This would place the City in a better position by the end of the year.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Bruce Tichinin stated that in understanding the instructions he received from the City Attorney today about how he should proceed to try and accomplish what he would like to accomplish this evening, he was in attendance to request that the Council schedule reconsideration of appeal application AP-03-07: West Main-Vierra for the Council's February 18 meeting. He stated that he is making this request based on a couple of important developments that have occurred since the last hearing. He stated that he spoke with Ms. Bernadini and that she has agreed to call a meeting of her neighbors to consider an alternative development plan. This would be presented to them to comply with City staff's interpretation of where the 500 foot contour line goes in the hope that they would join in the request for reconsideration. He said that the alternative development plan would entail less expensive homes on smaller lots constructed closer to their residences, the opposite of the underlying concerns that caused the neighbors to speak to the Council last week. He indicated that although Council Member Carr was kind enough to suggest, and the Council allowed him the opportunity to respond to City Attorney Leichter's points, he stated that in retrospect, he was stunned by the force of the points. He did not believe that they respond satisfactorily. However, two cases have come to mind that he would like to present to the City Attorney and the Council. These two cases will attempt to answer the issues raised by City Attorney Leichter and indicated that it would be appropriate to interpret the location of the general plan line as a matter of law where he suggests that it is. These are the issues he would like the Council to consider.

No further comments were offered.

Council Member Carr indicated that he does not have an objection to rehearing the appeal request but that his concern is that he is not available for the Council's February 4 meeting, noting that another Council Member stepped down from this issue. This would result in the Council being down two members to listen to the issue. He suggested calendaring reconsideration of the appeal application to the February 18 meeting. If the Council is going to schedule the matter, this may give the Council the opportunity to seek some planning commission thoughts on this as well.

Action: *Mayor Kennedy requested that staff **agendize** appeal application AP-03-07: West Main-Vierra for reconsideration at a future meeting. Staff to work with Mr. Tichinin and the Council's schedule to determine a hearing date.*

City Manager Tewes informed the Council that one of the issues that staff will be discussing in the intervening weeks with Mr. Tichinin is the affect on the current Measure P competition. He noted that

Mr. Tichinin was anxious to have his appeal heard and decided upon so that he would know whether his Measure P application would be scored. He indicated that staff is in the process of scoring the applications to bring them before the Planning Commission. He stated that there was a suggestion that there might be a possible amendment to the application which would require resubmittal and rescoring. When the Council discusses this, staff will bring the implications of the Measure P process to determine the sequences with the other activities the Planning Commission is engaged in.

City Council Action

CONSENT CALENDAR:

Council Member Chang requested that item 4 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 2 and 5-14, as follows:*

1. **DECEMBER 2003 CITY FINANCE AND INVESTMENT REPORT**
Action: ***Accepted** and **Filed** Report.*
2. **AMENDMENT TO PLANNING DIVISION CONTRACT SERVICES BUDGET FOR UNANTICIPATED ENVIRONMENTAL CONSULTING SERVICES**
Action: ***Approved** the Appropriation of \$7,000 from the Community Development Fund Balance (206) to Fund Unanticipated Environmental Consulting Services.*
3. **AMEND AGREEMENT WITH THE STROMBOTNE LAW FIRM**
Action: ***Authorized** the City Manager to Execute an Amendment to Agreement with the Strombotne Law Firm.*
5. **AQUATICS CENTER PROJECT – DECEMBER CONSTRUCTION PROGRESS REPORT**
Action: ***Information Only.***
6. **ACCEPTANCE OF SUBDIVISION IMPROVEMENTS FOR TRACT 9234, CAPRIANO PHASE I – Resolution No. 5763**
Action: *1) **Adopted** Resolution No. 5763, Accepting the Subdivision Improvements Included in Tract 9234, Commonly Known as Capriano Phase I; and 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office.*
7. **ACCEPTANCE OF THE CONSTRUCTION OF BUTTERFIELD BOULEVARD – PHASE IV IMPROVEMENTS PROJECT**
Action: *1) **Accepted** as Complete the Construction of Butterfield Boulevard – Phase IV Improvements Project in the Final Amount of \$3,609,164; 2) **Approved** an Amendment to the Professional Services Agreement with MH Engineering for Design and Survey of Butterfield*

*Boulevard Extension Project, Increasing the Approved Amount From \$172,957 to \$201,756; and 3) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

8. **APPROVAL OF IMPROVEMENT AGREEMENT FOR 1295 EAST DUNNE AVENUE (APN 728-17-023)**

Action: 1) **Approved** the Improvement Agreement with Arch Design, Inc.; and 2) **Authorized** the City Manager to Sign the Agreement on Behalf of the City.

9. **AMENDMENT TO ANNUAL CONTRACT WITH MONTEREY COUNTY LABORATORY FOR WATER SAMPLING AND ANALYSIS**

Action: 1) **Approved** the Amendment to the Agreement Dated 2003 with Monterey County Laboratory to Increase the Maximum Compensation for Fiscal Year 2003-2004 from \$50,000 to \$115,000; and 2) **Approved** the Appropriation of \$50,000 from the Unappropriated Water Fund Balance (650) to Fund Unanticipated Perchlorate Testing and EPA Water Quality Testing.

10. **ADOPT ORDINANCE NO. 1644, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1644, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1310, NEW SERIES WHICH PREZONED 9.45 ACRES LOCATED ON THE WEST SIDE OF DEWITT AVENUE NORTH OF SPRING AVENUE FROM COUNTY HS, HILLSIDE TO CITY R-1 (12000)/SINGLE FAMILY RESIDENTIAL PLANNED DEVELOPMENT. THE AMENDMENT INCLUDES THE ADOPTION OF A PRECISE DEVELOPMENT PLAN FOR THE 21-LOT, 9.45-ACRE RESIDENTIAL PLANNED DEVELOPMENT (APNs 773-08-012 through -016).**

11. **ADOPT ORDINANCE NO. 1645, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1645, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL PRE-ZONING 27.1 ACRES, FROM COUNTY A-20 TO PUBLIC FACILITIES FOR APNS 725-01-012 & 013 AND 0.7 ACRES FROM COUNTY A-20 TO R1-7,000 FOR APN 725-01-021 FOR APPLICATION ZA-03-17: BURNETT-MHUSD SOBRATO HIGH SCHOOL.**

12. **ADOPT ORDINANCE NO. 1646, NEW SERIES**

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1646, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT, DA 03-10 FOR MP 02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010).**

13. ADOPT ORDINANCE NO. 1647, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1647, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1597, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-26: MALAGUERRA-ANSUINI/MANCIAS TO INCORPORATE A NINE-MONTH EXTENSION OF TIME FOR SIX, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APNs 728-35-016 & -017)/(DAA-00-05: MALAGUERRA – MANCIAS).

14. ADOPT ORDINANCE NO. 1648, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1648, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1622, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-01: BERKSHIRE - SINGH TO INCORPORATE A THREE-MONTH EXTENSION OF TIME FOR THE FOUR-UNIT PROJECT. (APN 764-23-054)/(DAA-00-08: BERKSHIRE - SINGH).

4. THE USA PATRIOT ACT

Council Member Chang stated that she considers the Act to be a Federal issue. She stated that she would not object to any action the Council may be taking on this item but that she would be abstaining from the item.

Council Member Carr indicated that the Legislative Subcommittee discussed the USA Patriot Act for a long time. He indicated that this is a law that Congress passed two years ago and signed by the President that is up for reauthorization this coming year. The law affects how law enforcement conducted some of its activities. He said that the Legislative Subcommittee is recommending that the Mayor execute and send correspondence to the United States Attorney General and the California Congressional Delegation regarding the City's concern that it has over the Patriot Act. He indicated that the Legislative Subcommittee raised the issue of whether it was the City's place to get into Federal business or whether the City should spend time doing so. The Legislative Subcommittee specifically looked at ways that the Patriot Act affects City operations. The Legislative Subcommittee's specific objections to the Patriot Act relates to in the way it affects City operations.

Mayor Pro Tempore Sellers said that the City, as a rule, abstains from many state and federal issues that do not have a direct impact on the City. When the City was approached by citizens requesting that this Act be considered, the first reaction was whether there were any impacts to the City. He stated that several cities in Santa Clara County have acted on this issue as well. He said that there was significant legal background that has gone into the Act that the Legislative Subcommittee took a look at. The Legislative Subcommittee believes that there are direct impacts, particularly in terms of the City's

administration of law enforcement and the way it would treat its citizens. This was a matter of having the City on record, as a community, that it has concerns of basic first amendment rights. He said that it is the duty of individuals, as well as collectively as a City, to stand up and state that the very things that we stand for as Americans are defended and dealt with at a local level as well. After careful consideration, the Legislative Subcommittee felt that it was a City matter and decided to bring the discussion of the Act to the Council for consideration.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0-1 vote with Council Member Chang abstaining, **Authorized** the Mayor to Execute and Send Correspondence to the United States Attorney General, with a Copy to the California Congressional Delegation, Regarding Concerns About the USA Patriot Act (PL 107-56).*

City Council Action (continued)

CONSENT CALENDAR:

Council Member Chang requested that items 15 and 16 and Council Member Carr requested that item 17 be removed from the Consent Calendar.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on 4-0 vote with Council Member Chang absent, **Approved** Consent Calendar Items 15 and 16 , as follows:*

15. ADOPT ORDINANCE NO. 1649, NEW SERIES

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1649, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A .30 ACRE AREA OF APN 726-24-023 CHANGING THE ZONING DESIGNATION FROM R-3 TO R-2/RPD AND APPROVAL OF A RESIDENTIAL PLANNED DEVELOPMENT OVERLAY AND PRECISE DEVELOPMENT PLAN FOR A 16 UNIT R-2 (3,500)/RPD MULTI FAMILY LOW DEVELOPMENT LOCATED ON THE EAST SIDE OF MCLAUGHLIN AVENUE, NORTH OF CENTRAL AVE. (APNS 726-24-006, 007, 022, 023 & 024).**

16. ADOPT ORDINANCE NO. 1650, NEW SERIES

Action: **Waived** the Reading, and **Adopted** Ordinance No. 1650, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT DA-03-02: MCLAUGHLIN-JONES (APNS 726-24-006 & 007).**

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Item 17, as follows:*

17. RESULTS OF PRELIMINARY TRAFFIC CALMING STUDIES AT FOUR CITY LOCATIONS

Action: Information Only *at This Time, Pending Approval of Neighborhood Traffic Management Policy.*

Mayor Kennedy opened the floor to public comment

Mac Rossi stated that he had the opportunity to speak with the City's consultant. He stated that it was his belief that Jackson Oaks Drive was an incomplete study. He provided the Council with a copy of the letter he forwarded to the public works department. He said that while the other three studies had boundaries in terms of street to street, Jackson Oaks was defined as Jackson Oaks Drive. Wherever the consultant had recommendations for barriers, they only gave a report for half of the full street. He wanted to bring this concern to the Council's attention before the City pays the consultant.

Mayor Kennedy stated that although the Council approved proceeding with the studies, the Council will follow through with Mr. Rossi's recommendation.

No further comments were offered.

City Manager Tewes indicated that staff would report back to the Council and respond to Mr. Rossi's letter.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 18 and 19, as follows:*

18. DECEMBER 2003 RDA FINANCE AND INVESTMENT REPORT

Action: Accepted and Filed *Report.*

19. ANNUAL REDEVELOPMENT REPORTS FOR FISCAL YEAR 2002-2003

Action: Filed *the 2002-2003 Redevelopment Agency's Annual Report of Financial Transactions, Housing Annual Report of Housing Activity, and Property Report.*

Council/Agency Member Tate inquired whether the Council/Agency Board would be prioritizing the items on the agenda according to the audience in attendance as this could be a very long agenda.

Mayor/Chairman Kennedy indicated that there have been some requests to prioritize agenda items. He recommended that the water rate discussions be moved to later in the agenda.

Mayor Pro Tempore/Vice-chair Sellers recommended that the water rates remain where placed on the agenda. However, under other business, the Council may wish to move the library agenda item up ahead of agenda item 27.

Council/Agency Member Tate recommended that item 32 also be moved up.

City Council Action

PUBLIC HEARINGS:

20. REFINANCING FEE – *Resolution No. 5764*

Director of Finance Dilles presented the staff report, indicating that the Council has adopted a schedule of fees with a general approach for full cost recovery. He stated that it would be appropriate to add a new fee to the list to be known as the “refinancing fee.” This fee would be for City staff time to process documentation to allow for a third party to refinance their outside loan and still maintain certain benefits that they might be receiving from the City or Redevelopment Agency (e.g., loan from the City or subordinate below market rate resale agreements to an outside loan).

Council Member Carr inquired whether there are any limits to the number of times someone who has a loan or BMR can refinance. He said that establishing limits may be helpful to the City. He said that he is aware that the County and other programs establish limits before you give up this benefit where you pay the benefit back when you refinance.

Director of Business Assistance and Housing Services Toy said that for the BMR program, it makes it more affordable for the homeowner. There is no dead of trust to the City. Therefore, there is nothing that can be returned. He said that the City could consider that if there is a refinancing request and the City has a rehab loan, the property owner could refinance so that the money can be recycled sooner.

Council Member Carr felt that Mr. Toy’s suggestion may be worth taking a look at.

Mayor Pro Tempore Sellers noted that staff indicated the costs would be \$135 plus CPI plus staff overtime. He did not believe that there would be staff costs associated with refinancing.

Director of Finance Dilles informed the Council that individuals may be under a time pressure and come to the City on a short time frame. They ask staff to push through the refinancing. On occasion, staff has found that they have to stay after hours and work overtime to be able to accommodate assisting individuals. He said that the annual cost of living increase is consistent with most city fees where there is an annual escalator.

Mayor Pro Tempore Sellers felt that it would be appropriate to charge this fee when there are extenuating circumstances and an individual wants the City to fast track services.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5764*

21. FEE IMPLEMENTING CITYWIDE BURROWING OWL HABITAT MITIGATION PLAN – Resolution No. 5765

Director of Finance Dilles presented the staff report, indicating that this would be another new fee that City staff is recommending Council approval. This fee would cover the cost for implementing the City-wide burrowing owl habitat mitigation plan adopted by the Council in June 2003. He said that there are certain costs necessary to implement this plan. The proposed fee of \$149 for each new residential unit or \$1,044 per acre for non residential use would provide for full cost recover for implementing the plan.

Mayor Kennedy opened the public hearing.

Tom Seitzler, Countryside Villas Homeowners Association, suggested that the Council table this item in order to allow City Treasurer Roorda's input on the budget deficit. He agreed that the City should take care of its environment and habitat. However, the cost of doing so, at this time, appears a little steep as a homeowner and potential taxpayer. He did not believe that it was prudent to implement the fee at as time when the economy is as tight as it is.

City Attorney Leichter indicated that this is the last step of what has been a very long process which started with an amendment to the Redevelopment Plan. It was found that this amendment had impacts on the burrowing owl and that part of the mitigation plan, adopted by the Council, committed the City to a burrowing owl mitigation plan. She indicated that this plan took several years and a lawsuit to develop and resolve and that the mitigation plan was eventually adopted. It was contemplated that fees would be imposed to pay for the implementation of the plan. Therefore, this is the last step in that analysis. If the City does not impose fees, the City will still have to impose the plan and the taxpayers will have to pay for it. By imposing the fee, it will be the user that pays for it and not the general tax payers of Morgan Hill. If the City does not implement the fees, the City would have to pay through the expenditure of general fund monies.

Mayor Kennedy clarified that this fee would be imposed on new development and that existing property owners would not be faced with the fee.

City Manager Tewes said that this plan was developed over a series of years with the assistance of an advisory group that included representatives of residential and commercial development who are recommending the fees.

No further comments being offered, the public hearing was closed.

Mayor Pro Tempore Sellers felt that it was important for the public to know that it is a matter of who pays, not if the city pays. He indicated that this mitigation plan has been mandated. In the development of the plan, the City came up with a solution so that the individuals who are paying the fees are the ones who are having the direct impact on the habitat as opposed to tax payers. He indicated that this has been a long process but that it is easy for the Council to approve this evening as it is making sure that the individuals who created the impact are the ones who pay.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Adopted** Resolution No. 5765*

22. WATER RATES

Director of Finance Dilles presented the staff report, indicating that on November 19 and December 10, 2003, the Council considered staff reports regarding water rates and the necessity to change them. The Council directed staff to return this evening with a public hearing and to contact representatives from some of the larger irrigation users in town as part of the proposed rate structures. He indicated that staff would be discussing two subjects in terms of water rates: 1) perchlorate related surcharges to all existing water rates; and 2) a 50% increase to the upper tiered level of water usage for large irrigation users. He indicated that staff considered the feedback and the direction provided by the Council and conducted additional research. Staff is returning to the Council with some modifications to the previous proposal. He indicated that staff heard from the Council that the City should consider moving away from the percentage reserves that have been established by Council policy following the recommendation of the outside rate consultant. Staff calculated three different percentages and that this calculated into certain dollar amounts. As staff proposed and implemented rate increases and cost increases, these reserve levels need to be raised in order to keep up with the correct percentage. He said that when staff describes the revenue requirements, it is in terms of the amount of money the City needs in order to recover all water related costs from now through 2004. Staff has restated the reserves back to the dollar amounts that the consultant originally recommended. By doing so, staff has reduced the proposed surcharges from 6% to 5%. He indicated that four rate increases are still proposed: April 2004, January 2005, January 2006, and January 2007. Staff also described the surcharges as perchlorate related charges rather than just rate increases. He stated that the resolution before the Council calls for the surcharge and mandates that the City spends this money only on perchlorate related costs. In addition, this money is to be returned to the City's water customers if it is not needed for perchlorate related costs. He indicated that there is a current requirement that the finance director, by every September 30, report back to the City Council whether or not the City needs a 2% rate increase. If not needed, the City would back off from this increase. Staff has now expanded this concept to state that at the same time, the finance director will report on the necessity of implementing and continuing these rate surcharges. By each September 30, there would be a determination of whether there is enough money for perchlorate related charges collected from the community to cover the anticipated related perchlorate costs through the following four years. If there are enough funds, the City would proceed to rebate money back to the water rate payers through across the board rate reduction. If there is insufficient money to pay for these anticipated costs, the rate surcharge would remain in place and the next rate increase would be implemented.

Finance Director Dilles displayed updated charts and graphs relating to revenue requirements in order to pay for all water costs between now and June 2007. He indicated that the City needs to generate \$2.7 million in proposed rate surcharges. Also, displayed were fund balance analyses with and without the rate surcharge. He explained the reasons for the financing shortfalls (e.g., less water being sold, paying more pump tax, increase in operating cost). He informed the Council that the Water District has indicated that their staff may propose an additional increase to cover the Water District's perchlorate related costs in South County. He indicated that these potential increases are not included in these numbers.

Council Member Tate felt that the rate payers would not see or understand a rebate surcharge for perchlorate once the City gets reimbursed for the perchlorate related costs. He felt that there should be a way to account for this cost/reimbursement to the City's customers.

Mr. Dilles indicated that staff could show the surcharge as a separate line item and that the City could show the opposite on the water bill that would show the rebate to the customer. The customer would see their regular rate and see the credit or reduction as a separate line item. He said that the City has an accounting system that staff can track as the money comes in to be spent on perchlorate and what the net balance is, reporting this information.

Mayor Pro Tempore Sellers said that there is no guarantee that the City would be repaid for perchlorate related costs by Olin Corporation. If this is the case, it would be prudent to dip into the reserves and not increase rates at all.

Mr. Dilles said that the problem with dipping into the City's reserves is that the City does not know when it will receive reimbursement for perchlorate cleanup. He stated that staff is not recommending that perchlorate fees be paid from the City's reserves, but is recommending the surcharge.

Mr. Dilles indicated that staff spoke to the Council about a multi tiered system for irrigation users and that the Council directed staff to return with a simplified tiered alternative and to look at different classes of customers in terms of irrigation. He informed the Council that staff excluded governmental agencies and left their rate structures alone. Staff created another class consisting of commercial, industrial and homeowners associations (HOA) which tend to be the other large irrigation users. He said that staff looked at the median usage during the month of August 2003, identifying who was far over the median. Staff found the City's 10-14 high irrigation users. Staff calculated the amounts of water used for each sized meter (1", 1.5" and 2" meters), and displayed the proposed irrigation rates for commercial, industrial and homeowners associations. He indicated that staff met with 7 of the high end water users last week. These users state that it would be expensive to re landscape for low water usage. He stated that the community needs to reduce its water usage so that the City can manage its water supply; particularly as it relates to perchlorate and the risk that the City faces when all wells are not on line. The City also needs to make sure that there is enough water to fight fires and meet all of its long term goals with water management. He said that it comes down to a decision for the businesses but that staff is hearing from some of the customers that there is a financial burden being placed upon them. In relation to homeowners association, it was stated that it was not fair to look at creating an upper tier for

HOAs who have a meter that serves a retention pond, a common area, and front lawns. Some of the HOAs are stating that if you take the irrigation readings and divide that by the number of units that exist, you would not get a large number. He said that it would be a lot of work to try and match up what the HOAs are paying for outside usage, what the homeowner is paying for the inside usage and try to put these together to make some sense. He said that it may be, in some cases that they pay less but in other cases they are not. He said that HOAs were established with an outside irrigation meter and that this is serving a large area. He stated that it is different than comparing it to a series of single family homes that are not in an HOA. Staff also heard from a HOA representative that the perchlorate costs should be debt financed so that it would be paid back later and tied in somehow when Olin pays the City. He stated that it would be possible to finance part of this (e.g., drilling of well) but not the operations cost. The issue is that you increase the City's costs with debt financing and that it would be the same rate payers that would be paying it now or later, realizing that Olin will ultimately cover this cost. Therefore, staff would not support this suggestion. He stated that some of the customers would like to sit down with City staff and talk about some of the options they have and how the City can help them in terms of ripping out sod and replacing it with something else. He stated that staff would be willing to assist, procedurally, as well as with ideas. Staff pointed out that the Water District has various programs that help large water users reduce their water usage.

Mayor Kennedy opened the public hearing.

Tom Seitzler indicated that Mr. Dilles was very helpful in communicating information about the water bill. He stated that he read through the resolution and felt that it appears more of an increase versus a surcharge. He referred to Section 3 of the resolution. He felt that this section indicates that staff would come before the Council for an increase but not for a review to see if the previous rates should be left in place. Therefore, it would be a rate increase versus a surcharge. He felt that the surcharge would tend to go away after a period of time. He requested that the Council take a look at this because the Council would be voting for what may become a 20% rate increase over the next four years. In looking at the perchlorate test results, he noted a blip at the Tennant well and at the Dunne Avenue well. He urged the Council to table this item or vote very carefully on the rate increase. It was his belief that the City has already received \$500,000 from Olin. He was not convinced, as a citizen that the City needs to increase the rates.

Mike Marshall, president of the Morgan Ranch Homeowners Association, stated that the homeowners understand that there is a need for a rate increase to cover expenses. However, the HOA is in opposition to the proposed tiered increase for HOAs. He stated that HOAs already pay 66¢ more per unit of water than any other single family dwellings just because they are a HOA. He informed the Council that water was 19.4% of the HOA's entire budget which equates to approximately \$20,000 last year. Using last year's usage and applying the new rate as proposed would result in a 13.9% rate increase for a HOA while other single family homeowners that are not part of an HOA would only get a 5% rate increase. He felt that this creates an unfair burden on the residents of an HOA, paying up to \$2.54 per unit when a neighbor not in a HOA is paying 99¢. He said that his front yard is watered by the HOA and that it could get up to the \$2.54 rate while paying 99¢ per unit for his backyard. He stated that the HOA has a problem with the proposed definition of a "large user." He stated that Morgan Ranch has four meters: one for the pool and that the other three meters serve the 96 homes as well as the common area. He

stated that each meter averages 32 homes per meter. He felt that it would be interesting to attach 1 meter to 32 single family homes outside of an HOA to see if they exceed 812 units during the summer months. He said that the situation in Morgan Hill is not a lack of conservation but an over usage of the meters. The meters are being used 30 times more than the average homeowner would use. He requested that the Council re examine the proposed tiered rate increase as it applies to HOAs.

Dan Amend, Vice-president of Toeniskeotter and Breeding (TBI) Development, informed the Council that they are the principal owners of the Madrone Business Park and the Cochrane Business Ranch. He indicated that these two business parks represent over 1 million square feet of commercial real estate and house over 25 companies doing businesses in Morgan Hill, including some of the City's largest employers. He indicated that he has reviewed the information provided by Mr. Dilles and understands the costs associated with the perchlorate issue and the short term need for a 5% increase. However, the Council needs to keep in mind that this 5% increase will have a significant impact on business parks. He understands that it is necessary and supports it. However, he cannot support the 50% surcharge being levied in the hopes of reducing water consumption by the City's largest users. He stated that he has begun researching with his landscapers what can be done to reduce water consumption but that the proposed thresholds represent about 32% of the water currently being used. A nearly 70% reduction in watering would result in the frontage lawns dying. He stated that throughout the development process, he worked with City staff to design a business park that would portray the inviting image that the City was looking for to encourage businesses to locate in Morgan Hill. This has resulted in Morgan Hill having a business friendly reputation. He felt that dramatically increasing the cost of water would translate into a business tax, an additional cost of doing business in Morgan Hill. He felt that this would damage Morgan Hill's business friendly reputation and prove a competitive advantage to neighboring municipalities. He stated that TBI stands ready to work with the City of Morgan Hill to study all options available relating to increasing the City's available water supply and delivering cost affective water to all its citizens.

Eilane Bartak, Cottage Green Homeowners Association, stated that there are 116 single family homeowners in the HOA. She concurred with the comments expressed by the representative from the Morgan Ranch HOA that HOAs are being unfairly targeted. She indicated that there are a lot of retirees on fixed incomes in the HOA. She indicated that the water rates have gone up every year for the past three years and that the HOA has a conservation plan in place. She noted that a typical homeowner is allowed 10 units before the first tier is raised. This HOA also receives the 10 units; but noted that the residents only use between 3-5 units per billing cycle. Based on conservation, this HOA would not fall into the City's category as units would be credit back to the homeowners. Homeowners would still pay for the water at the normal rate but questioned why a homeowner in a development pays more for their water versus a homeowner who is not a part of a HOA. She requested that that the Council gives HOAs the same credit that a typical single family would be given.

No further comments being offered, the public hearing was closed.

City Manager Tewes said that there are a lot of complicated issues as they affect individual rate payers. However, the City knows that its residential customers and indoor commercial customers have tiered rates in order to encourage water conservation. When staff came to the Council with the suggestion that

the City needs to increase rates to improve its revenue requirements, the Council and a number of citizens coming to the podium indicated that the City has problem as the City has tiered rates for some customers but not for others. He noted that the Council is hearing from the other customers as there is discussion about individuals who have outside irrigation meters for which there is not a tiered structure. Therefore, they pay the same for the last unit of water that they do for the first unit of water. He indicated that the City is not talking about the largest water rate users, but that staff is talking about a subset of the largest water rate users who use 400% of the median. This equates to whose water usage is four times the median. He appreciated the fact that there are unique considerations about homeowners associations. If the Council wishes staff to consider this further, there is probably work that staff can do. He wanted to place on the record the context of the water conservation rates for irrigation. He indicated that the second tier would only kick in for those who use a lot more water than all the other irrigation users.

Council Member Chang stated that she agreed with the comments expressed by the homeowners association because they are individual homes. She felt that it was unfair to lump them together.

Mayor Pro Tempore Sellers inquired as to the number of HOAs and industrial users who were contacted.

Mr. Dilles responded that 37 individuals were contacted. He indicated that he would be able to provide the Council with the number of homeowners association that were contacted.

Mayor Pro Tempore Sellers did not believe that the City can abandon the goal of conservation as the City does not have the luxury of doing so in terms of financing and demand on the City's water system. He did not know whether the public, as a whole, was aware of how close the City came to being short of water last year. He said that there was an acute danger from fire in July. If the City is looking at small units of individual users, it may be worthwhile for staff to meet with these individuals and talk about ways of achieving conservation with the understanding that the rate structure would still be something that the City would consider if these goals cannot be achieved. He felt that there may still be an opportunity for City staff to go back and talk with these customers and look at ways to conserve water usage. He said that he was not under the impression that the City would be getting money back from Olin. He stated that he needs clarification with this regard because it would impact his decision on how the City should proceed on this item.

City Attorney Leichter stated that it is an "if" and not a "when" the City receives reimbursement from Olin Corporation. Although the City has received some reimbursement costs to date, she said that it would take some effort, on the City's part, through court action, to get full return on the monies expended.

City Manager Tewes noted that a speaker inquired whether or not it would be a 20% increase. He indicated that the intent of the resolution is to provide for annual 5% increases only as long the Council receives a public report from the Finance Director that indicates that there is still a need for funds to pay for perchlorate costs. If the Finance Director's report indicates that there is not a need for the increase, then the rebates would kick in and would be shown on the water bills. Therefore, it is the intent of the

resolution to provide an annual review by the Council to determine whether the City has enough resources. If it does not, the Council would adjust the rates. If the City has enough resources, customers would receive a rebate.

Council Member Tate stated that Section 3 of the resolution gives the Council latitude every year to take the report and figure out what needs to be done. He agreed with Council Member Chang's comments relating to the homeowners association. He could not see paying one rate in the front and another rate in the backyard. He felt that the City needs to find a way to equalize the rates. Regarding the rate payers who are outside of a homeowners association, he felt that Mayor Pro Tempore Sellers has a great idea in terms of trying to work with these customers for a while to let them know that the City would like to go toward a tiered structure. However, the City will work with them to see how it can help them conserve water.

Mayor Pro Tempore Sellers recommended that this item return in six months to determine if water conservation is taking place, otherwise, further discussion/action needs to occur.

Mayor Kennedy stated that his thoughts were similar to the comments made thus far. With respect to the perchlorate issue, he stated that it is a serious problem and that the City is addressing it aggressively. The City is also aggressively going after Olin to recover costs. In the meantime, the City needs to keep its water system funding fiscally sound and viable. Therefore, he felt that the Council needs to increase the rates by 5% and then rebate these if and when the City receives payment from Olin. With respect to the larger homeowners associations and industrial business users, he would support tasking City staff to have another meeting with both of these groups, specifically those who addressed the Council this evening. Staff to work with these individuals to see if a solution can be reached that is fair and equitable to everyone. He felt that the proposal unnecessarily over charges homeowners associations. He said that it is not a good time to impose additional costs to some of the City's key businesses nor does the City want to damage the appearance of their facilities, yet recognizing that there is a responsibility to conserve. He stated that he did not have a problem charging these rates on new development but that for existing businesses, he would support a phasing plan to the new rate structure over a five year period. He stated his support of moving forward of the 5% rate tier structure.

Council Member Carr appreciated that staff would specifically earmark the perchlorate dollars in the billing and how it is accounted for so that the City can give this credit back when the City is reimbursed by Olin Corporation. He stated his support of moving forward this evening with the rate increase to correct and protect citizens from perchlorate. As the City has these additional costs, the City needs to move forward with the rate increase. He would agree to take a look at the tiered rate structure again. He felt that at the end, the City will need to have some kind of tiered rates when the City talks about the high end users; those who use four times the median amount of water. He would like to discuss and figure out what is equitable. He said that he found it odd that HOAs are paying different rates for the front and rear yards. Maybe there is a way to change how these are metered, provided that everyone understands that there are benefits that are enjoyed by the homeowners association. He noted that citizens do not have access to the amenities of the various homeowners association such as a swimming pool. He did not believe that he should have to pay additional costs for the pools and other amenities that homeowners associations enjoy. These are things to keep in mind as the City considers this issue,

but that it sounds as though staff may have some ideas on how the Council can work on these. He stated his support of moving forward with the 5% rate increase and sending the tiered structure back to staff.

City Attorney Leichter indicated that increasing the rates to 5% and sending the tiered structure back to staff would change the resolution. She suggested that staff be allowed to return with a resolution consistent with the Council's action.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Directed** staff to return with a Resolution that would address the perchlorate increase; deferring the resolution on the other increases for six months. Staff to meet with speakers and other interested individuals regarding water conservation and the proposed tiered rates.*

City Attorney Leichter clarified that the action would not automatically adopt a tiered increase in six months but brings the proposed tiered increase back to the Council in six months for discussion.

23. DEVELOPMENT AGREEMENT AMENDMENT DAA-02-07: SHAFER-BAMDAD – Ordinance No. 1651, New Series

Mayor Kennedy indicated that he resides within 500 feet of this development. Therefore, he would be recusing himself from this item, excusing himself from the Council Chambers.

Director of Community Development Bischoff presented the staff report, indicating that the applicant is requesting an additional year's time for both phases of the project to commence construction. He informed the Council that the Planning Commission found that the delays amounted to nine months for the first phase. The applicant is requesting additional time for the second phase because he did not want to begin constructing the first and second phases at the same time. In light of this, the Planning Commission is recommending a 9-month extension for the first phase and a 4-month extension for the second phase and further recommended the ability to provide alternatives to the offsite improvements to Hill Road that would be an equivalent financial value in terms of Measure P commitments.

Mayor Pro Tempore Sellers opened the public hearing.

John Telfer, speaking on behalf of the applicant, thanked the Planning Commission for recommending the extension of time. However, the way it was approved at the Planning Commission level still leaves the project with two problems that he would like to discuss and request Council consideration. As approved, the project would have a commencement of construction deadline of April 30, 2005. In order to meet the City's definition of commencement of construction of this spring date, the project would require a lot of earthwork done a couple of months in the middle of the rainy season. He said that there are four existing homes that would be greatly impacted should earthwork be done in the middle of winter. He requested that the Council place the commencement of construction date to the June 2005 date, the original request for a one year extension. He stated that it is very important that the spread between phases I and II be one year because this particular project is different from Measure P projects as it is made up substantially of larger lots and will have larger homes. It is anticipated that the homes

will be sold from \$1.2-\$1.8 million. He informed the Council that the construction lenders he has been meeting with have a concern because of the absorption factor of how many homes can be expected to be sold at this price range in a given month. There is a question whether the absorption factor can support this price range in this short period of time. He was not sure if the project could receive the financing unless the project is granted a one year gap to allow for the absorption factor. Given these facts, he requested that the Council grant a commencement construction deadline for phase I of June 30, 2005 and a one year extension for phase II to June 30, 2006.

Rafi Bamdad, applicant, stated that one of the main problems of conducting earthwork during the rainy season is attributable to the overwhelming lawsuits that have resulted. He indicated that soil engineers are rejecting to certify compactions in wet muddy soils. Because of the design factors of these homes, the foundations' designs which are slab on grade would result in the project being liable up to 10-years. He requested that the Council grant the normal time frame for construction. He indicated that he was able to move forward with the improvements across the street with the phase I improvements. He stated that he agreed, as part of his Measure P commitment, to \$2,000 per lot equivalent which would result in \$30,000 in improvements to be installed across the street from the project. If he is unable to install the improvements across the street, the City would not receive the full impact of the improvements. He suggested that he be allowed to give this dollar amount to public works to be added to a fund that could be used to achieve the best improvements for the City. He indicated that he has spoken to the homeowners on Shafer and 7-8 homeowners on Conte Way and that they have requested that roads be kept as clean as possible.

No further comments being offered, the public hearing was closed.

Council Member Chang stated her support of the extension of time as recommended by the planning commission.

Council Member Tate expressed concern with not accepting the planning commission's recommendation but that he also has concerns that the applicant would have to come back with another extension request attributable to the rainy season.

Mayor Pro Tempore Sellers indicated that there was another situation when the Council had this issue with larger homes. The cost factors were significant in terms of the financing abilities to sell the homes at the same rate. He inquired whether the information presented this evening was relatively new or was it presented to the planning commission for its consideration.

Mr. Bischoff responded that he did not attend the planning commission meeting and that the minutes do not reflect this discussion.

Council Member Carr said that in general, he was not in favor of extending ELBAs too many times. He understands that there is a need to grant an ELBA, when justified, and that he clearly sees the need for an ELBA for this project attributable to outside agency influences. If the Council follows the recommendation of the Planning Commission, he questioned whether the project would return with another request for extension because of weather concerns. The point where multiple ELBAs come into

place is what he objects to. If the Council is going to grant an extension of time, he recommended that one be granted that is realistic in order to make sure that the project gets completed.

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council, on a 4-0 vote with Mayor Kennedy absent, **Waived** the Reading in Full of Ordinance No.1651, New Series.*

Action: *On a motion by Council Member Carr and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1651, New Series, as amended, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1599, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-01-07: SHAFER – BAMDAD TO INCORPORATE A ~~NINE-MONTH~~ ONE YEAR EXTENSION OF TIME FOR THE SEVEN, PHASE I UNITS AND A ~~FOUR MONTH~~ ONE YEAR EXTENSION OF TIME FOR THE SIX, PHASE II UNITS OF THE 15-UNIT DEVELOPMENT. (APN 728-10-005)/(DAA-02-07: SHAFER – BAMDAD) by the following roll call vote: AYES: Carr, Chang, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: Kennedy.***

Mayor Kennedy resumed his seat on the Dias.

24. ZA-03-16: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT - SIGN CODE – Ordinance No. 1652, New Series

Director of Community Development Bischoff presented the staff report, indicating that the proposed zoning text amendment would allow for marquees or changeable copy signs but would require that the area for this be included in the overall aggregate sign area allowed for the building. It also limits the maximum letter height on the marquee to 12”.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1652, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council **Introduced** Ordinance No.1652, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING TEXT AMENDMENTS TO SUBSECTIONS 18.76.130A8, 18.76.250C AND 18.76.250F OF CHAPTER 18.76 (SIGN CODE) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL ALLOWING CHANGEABLE COPY SIGNS FOR MOVIE THEATERS. (ZA-03-16: CITY OF MORGAN HILL-TEXT AMENDMENT/SIGN CODE) by the following roll call vote:***

AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

25. ZA-03-21: CITY OF MORGAN HILL – ZONING TEXT AMENDMENT – INTERIM USE PERMITS – Ordinance No. 1653, New Series

Director of Community Development Bischoff presented the staff report, indicating that the Council directed that a committee be formed to look at the City's requirements for on and off site improvements for interim uses. This came up specifically because of the dayworker center and the implications/cross implications of installing on and off site improvements, particularly when you talk about a use that is of limited duration and of community benefit. He indicated that a committee was formed and included members of the Planning Commission and Council Member Tate. He indicated that an interim report was presented to the Council on December 3, 2003 and that it endorsed the tentative recommendations of the committee. At that time, the Council requested that the committee take a look at two other matters: 1) that there be an exit plan for vacating the premises and returning the property to its original state; and 2) draft findings with respect to the public benefit that would be realized as a result of waiving the improvements. He indicated that the proposed ordinance would not require interim uses to install on site improvements. The waiver would only be available to non profit agencies that provide public benefits within the CC-R or downtown zoning district and is not recommended to apply to other areas of the City. The duration of these interim uses would be up to a maximum of three years with no extensions of time to be authorized. Any use that applies for this waiver would be defined as an interim use and would require review by the planning commission and approved by the City Council. An exit plan would be required to be included as part of the original submittal. This would allow the Council to know what the plan is for vacating the premises once the three years are up. In addition, the draft ordinance would require annual monitoring of the use to ensure compliance with all conditions.

Council Member Tate said that there was a consensus of the committee that they could not see a temporary use beyond three years. He indicated that he proposed extensions up to five years and that he was convinced that this was not a temporary use. It was his belief that at the December 2003 Council discussion, Council Member Carr brought up the question of why a user needs to wait to submit an exit plan and why not start with an exit plan from the beginning of the process. This would give the City something to monitor every year to make sure that the temporary use is on track. He indicated that the request for an exit plan be submitted as part of the application submittal made a lot of sense to the entire committee, thus, the recommendation before the Council this evening.

Council Member Carr inquired how the City would determine public need.

Council Member Tate said that public need was left ambiguous in order to allow the City Council, on a case by case basis, to determine whether there in fact was a public need associated with an interim use.

Council Member Carr referred to page 357 of the agenda packet, section 18.54.210G.2., "The expected time for provision of such services and whether such services would be temporary in nature." He inquired whether this section was left ambiguous on purpose. He said that it seems that the idea is that the services themselves are not temporary in nature but the fact that the services are taking place in a

particular location is temporary. He referred to section 18.54.210I.1 relating to the timeline for purchase and/or lease of another site. He was curious whether there was discussion about the lease of another site which would not be an interim use. He inquired whether an applicant who receives approval of an interim use would be allowed to relocate to another interim site and seek another permit. He recommended that language be included to preclude this from happening.

Mr. Bischoff responded that he was not sure that “the temporary in nature” needs to be included in the ordinance based on the three year limitation. Therefore, he recommended that the second portion of Section G2 be eliminated. Regarding section I.1, he stated that it was the assumption that the three years would be the time period within which this program would need to get up and running. Within the three year period, the use would need to have the financial resources to move to a permanent site. He agreed with Council Member Carr that there was nothing within the ordinance that would preclude the interim use to move to another temporary location.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1653, New Series, Amending Title 18 of the Municipal Code Regarding Permits for Interim Uses.*

Action: *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1653, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING SECTION 18.54.200 (Interim Use Permits) TO CHAPTER 18.54 (Conditional and Temporary Use Permits) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING PERMITS FOR INTERIM USES, as amended (Amend Section 18.54.210G.2 to delete “and whether such services will be temporary in nature”; and amend section 18.54.210i.1. to read “A time line for purchase and/or lease of another a permanent site”), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

26. ZA-03-19: CITY OF MORGAN HILL-ZONING TEXT AMENDMENT - COMMUNITY ACTIVITY SIGNS AND CHANGEABLE COPY SIGNS FOR PUBLIC AGENCIES, SCHOOLS, PLAYHOUSES AND RELIGIOUS INSTITUTIONS

Director of Community Development Bischoff presented the staff report, recommending that the Council continue this item to February 18, 2004 in order to allow staff to complete the text amendments for Council consideration.

Mayor Kennedy opened the public hearing. No comments were offered.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Continued** Public Hearing to February 18, 2004.*

City Council Action

OTHER BUSINESS:

30. COUNCIL LIBRARY SUB-COMMITTEE SITE STATUS REPORT

Recreation and Community Service Manager Spier reported on the Council Library subcommittee site status report. She indicated that there are two avenues that staff has been working with the subcommittee: 1) submittal of the City's grant application to the State Bond. She indicated that the City was number 52 of 76 applications submitted. Staff was advised that the determination on the funding allocation would be held in September 2004. 2) Looking at alternative sites and new options, including funding and revision to the square footage of the current library proposal. She indicated that for the purpose of the State bond, the City has been looking at a 40,000 square foot footprint to build a library that would meet all future needs out 40-years. She stated that the subcommittee determined that a 30,000 square foot library would take care of the community's need for at least 20 years should the City have to solely fund the library. She indicated that the subcommittee has been looking at site footprints that would accommodate a 30,000 square foot library with a 10,000 square foot expansion. This would include parking and all amenities that need to go with a library.

Council Member Tate indicated that he and Mayor Kennedy worked with a library subcommittee. He addressed the pros and cons for the four site alternative library options:

1) Expansion of the current library facility. Pros: centric to schools; is not a heavy traffic area; no land costs; Cons: would not keep the existing library operating while the expansion is going on; a relocation and disturbance factor; not located adjacent to Monterey Road and therefore cannot be considered a mainstream location; not a lot of cost savings in terms of expanding the existing facility as expected.

2) Construction of a new library on the civic center site (Proposition 14 site). Pros: Approximate to the current location that everyone is familiar with; is not a heavy traffic area; the design for the new library is far along; Cons: Would be the most expensive option; not a main stream location; engineering problems associated with the slope and other factors that contribute to the fact that the site is more expensive.

3) Use of the current Britton Middle School site for a 30,000 square foot library with room for expansion. He indicated that staff has not had the discussion of the use of this site for a library with the School District. Pros: located in the gateway to the downtown; there is a synergy and stimulus with the downtown; will attract patrons that are doing things in the downtown; downtown businesses would benefit from those using the library; expanded parking available; it is a high public image area and therefore can be looked at as a main stream location; there are opportunities in terms of partnerships with the schools and mutual benefits being derived from this; it is a community centric location; Cons: additional building costs associated with having to build a school use facility; student supervision required by the fact of large student use; County regulations in terms of what county library staff can do to supervise students as opposed to what school supervision can provide; downtown traffic; rush hour

concern in terms of traffic safety (e.g., parents picking up students in the afternoon); unknown if the site is available.

4) The Sunsweet property located between Third and Fourth Street. Pros: site is located in the heart of the downtown; synergy and stimulus associated with the library in the downtown area; high public image; mainstream location; pedestrian friendly; easy to access all parts of the core of the downtown; community centric; Cons: library would have to be designed as a two-story building where libraries are better laid out as single story building; supervision problems when floors are split; expansion beyond 30,000 square feet would be more challenging because of the two-story aspect; individuals may consider this area to be unsafe due to downtown traffic; shared parking arrangement but that there would be potential for lower costs associated with a private development/lease the facility; costs unknown at this time.

Council Member Tate stated that he wanted to go in a direction of narrowing the alternatives to one or two options this evening. However, Mayor Kennedy wanted to keep the options open. Because the City does not know if it has an audience with the School District, the subcommittee does not see a way to narrow down the alternatives. Therefore, he and Mayor Kennedy are not recommending the removal of any of the alternatives at this time. He indicated that the subcommittee wanted to put together a timeline for this evening's meeting. The subcommittee is looking at near term meetings in the next couple of weeks that will allow them to work on the timeline. It is anticipated that the end of the timeline would be June 2004 to return with a solid proposal for the location and financing of a library facility.

Mayor Kennedy suggested that multiple library options be kept on the table in order to solicit community input in the selection of the best location. He indicated that there is thought of sending out a survey to receive public input of where the community believes the best site for the library would be as part of City Visions. He said that there are significant shortfalls associated with the financial gap with all options ranging anywhere from \$3 million to as much as \$7 million. The City needs to find a way to close this financial gap. However, he is committed to finding a way to build a new building as the Council needs to deliver on this promise.

Mayor Pro Tempore Sellers inquired as to the maximum allowable footprint associated with the two-story option.

Council Member Tate indicated that Mr. Garcia may wish to make some comments and that it might be best to ask him this question.

Council Member Carr indicated that at the Council retreat, the Council set a goal that it would have a plan in place for the library by June 2004. He inquired whether the library subcommittee has calendared this timeframe out.

Council Member Tate stated that he tried to calendar the library schedule this afternoon. He said that he would be able to come up with a calendar in the next few weeks. He said that a big part of the calendar is the public input period. He stated that the library subcommittee would like to take a couple of months

to educate the public in order to get back meaningful feedback. He anticipates returning to the Council with a calendar on how to achieve having a plan in place by June 2004.

Mayor Kennedy opened the floor to public comment.

Rocke Garcia thanked the Council for reconsidering his Sunsweet site as an alternative site for the library. He indicated that he is trying to achieve a synergy between downtown housing and the downtown area. The previous proposal was a link between the courthouse to the east of the site and the downtown. This proposal called for a promenade and art walk on Third Street that would incorporate nicely with the proposed library. Proposed is a 20,000 square foot footprint for the first floor and would accommodate a 10,000 square foot second floor. He indicated that he would like to see the City go with a two-story building in the downtown location because of the transit oriented development that the City is trying to create in the downtown. He indicated that a 2-3 story residential development is proposed adjacent to the library. He did not want the residential development to be taller or oversteering the library. He stated that he was approached on how to produce a library on a public-private partnership so that the funds expended by the City would be the least funds for the greatest use. There was discussion about a public-private partnership and a long term lease of which the City would be able to purchase the library building for \$1 at the end of the lease term. He felt that shared parking with downtown merchants would allow synergism between the library and downtown businesses. He has forwarded a letter to the City that would commit to today's building rates as long as he can be involved in the design process to help keep costs down. He noted that the Steinberg report felt that the Sunsweet site was the most compatible downtown site. He said that he would like to work on the library in partnership with the City. He indicated that alternative 1 offers 108 parking spaces and that the second alternative proposes 95 parking spaces. He said that the site is almost 2.75 acres and includes the Redevelopment Agency's 8,400 square feet. He said that the key to the partnership would be how the site is arranged to accommodate residential development.

George Nale addressed the need for a larger library. He stated that he has great respect for the time and effort that the Council members spend on trying to do the right thing for the City. The issue is that many individuals in Morgan Hill expect a new library based on the Visioning process, from the efforts to get state funding and from the apparent need. He noted that the state has let the City down but that it was his hope that this body does not let the citizens down. He said that literacy is a key factor to success in life. He requested that the Council help get the library that is needed and not max out the City's credit card until there is a solution.

Charles Cameron stated that the librarians took a look at the proposition 14 library proposal. They decided that what is really needed is a 30,000 square foot building that would get them through the next 30 years. He recommended that the indoor recreation plans be reduced by 25 percent and earmark money to build a 30,000 square foot library.

Jean Lloyde stated that over the years there have been many wise and carefully annunciated statements regarding the values of the importance of a library from children to the oldest patrons. She said that there have been requests from numerous sources for rebuilding and refurbishing the old library building. She requested the Council's most diligent efforts toward positive endorsement of a new library.

Joanne Rife stated that she has been a long time library patron and that over the years; the library has grown to be inadequate in its ability to serve the community. On behalf of herself and thousands of library users, she requested that the Council consider funding a large adequate library building for the least amount of money as soon as possible.

Carol O'Hare, co-president of the Morgan Hill Branch of the American Association of University Women and a former president of the Friends of the Library, urged the Council to build a new library. She was encouraged to see that the Council is looking at sites and that Mayor Kennedy has stated that the library will happen. She expressed concern that funds that might be used for the library would be used for other projects. She requested that the Council look at all the building projects, decide how they are to be funded, and then proceed.

Beverley Williams felt that one thing that has to be kept in perspective is the importance of what a new library means. As an educator and president of the Friends of the Morgan Hill Library, she felt that with the current financial situation, it will place a bigger demand on library services. She felt that the City has to be able to serve the baby boomer population and felt that they would need a library that is much different than what the City has today. She requested that the Council consider making the library a high priority.

Maryanne Flynn stated that as a 4.5 year resident and someone who plans to live in Morgan Hill for a long time, it is important to have an adequate library facility. Seeing the Council allocate funds for a library is something that would induce her pride in the community and make more resounding her recommendation that Morgan Hill as being an excellent place in which to live and raise children. She requested that the Council act to fund a new library for the community as soon as possible.

No further comments were offered.

Mayor Pro Tempore Sellers thanked all the individuals who spoke this evening. He said that the entire Council unanimously supports a new library as soon as possible, noting that funds were set aside early on. He felt that the City needs to focus on getting a library as soon as possible. He did not believe that it needs to be an "either or" but an "and." He stated that it needs to be pointed out that the library will always be important. He noted that there is an assumption, across the board, of the square footage for the library (e.g., 40,000 square feet versus 30,000 square feet). He said that the library that was built in 1973 was not built for the people who resided in Morgan Hill in 1973 but was built for a growing community. There was discussion as to the amount of square footage that would be necessary per library user. It was his recollection that it was estimated that ½ square foot would be needed per user of the library. He felt that one of the issues the Council needs to talk about is where the balance is. He stated that the City has looked at the library in terms of accommodating the entire population of library users which includes residents to the north and south of Morgan Hill and currently includes individuals from the Coyote Valley as well as residents from San Martin. He noted that there is a question about services to these two communities based on the City's limited resources. He stated that he would like to look at what the square footage would be. If you look at the square footage for 20 years from now, looking at just Morgan Hill and what is being proposed with Measure C, the square footage is proposed

for a population of 48,000. This would result in a smaller footprint than 30,000 square feet. He stated that he would insist on having a larger footprint in order to accommodate growth otherwise the next generation would be facing the same problem that the City is facing today. He requested that the library committee consider different footprint sizes. It was his belief that the County's funding adds additional square footage and may help the City get closer to the gap. He said that there are some residual benefits to siting the library in the downtown area such as pedestrian access and mixed uses. However, for the Britton alternative, there is a concern with traffic. He felt that the City needs to consider the mitigation costs to relocate where parents pick up students and mitigate the attractiveness of the site. He further recommended that the library committee make interim recommendations along the way; narrowing the options to 1 to 3 options. He expressed concern that should the options be narrowed down to 1 and the Council is not in agreement with the recommended site, this would result in further delays.

Council Member Tate said that there are 54,000 people in the service area of the Morgan Hill library and that the library committee wanted to program room for growth to 2010. He said that the 30,000 square foot library is a rough number based on the ½ square foot per population served. He felt that Mayor Pro Tempore Sellers raised a good point about alternative funding sources outside the Morgan Hill community because the Morgan Hill library is serving individuals outside the community. However, these are long term discussions but that the committee will place this recommendation on the list.

Council Member Chang recollected that at one point the proposal was for a 28,000 square foot library facility. She felt that the square footage was something that could be looked at. She noted that the City has reserved \$7.1 million for the library. If the City used \$.8 million from impact fees, it would increase the funds that could be used for the library to \$7.9 million. The sale of the existing police station would give the City another \$.7 million, resulting in a library budget of \$8.6 million. She recommended that the City use some of the flood money and this would take the library project to \$11.6 million. She noted that there are \$3 million in funds available to be used in the downtown area. Maybe part of this \$3 million can be used for the library, if sited in the downtown area. If the City can be flexible in terms of the library size, she felt that the City would be able to fund additional monies for the library and bring the construction of the library closer to fruition.

Council Member Carr said that when he became aware that this library report was coming before the Council this evening, it was his full intention to narrow the options as it was his belief that this was one of the things the Council has to do. After hearing the report, he understands why Mayor Kennedy has pushed to retain the four options described. He was going to suggest this evening to drop the most expensive alternative but noted that this is the alternative that the City has submitted an application for round 3 of State funding. He suggested that this alternative remain as an option. He supported taking interim steps suggested by Mayor Pro Tempore Sellers as it is important to bring the Council along the process. He stated that he would hate to be in the same spot that he was at his first Council meeting where the Council had to make a decision on the location of the library. At that time, the Council had a recommendation from a group that it had asked to do the work, noting that the Council chose a different site from what was recommended by the group. He stated that he would hate for the Council to be in this position again in June. He supported taking interim steps as the Council narrows down the options, bringing the Council and the community along will be important to not having a conflict and moving forward with the library sooner. If the Council reduces the size of the library, he felt that it would be

important to keep the larger footprint with the idea of expansion. The Council will need to think about how to plan and pay for this expansion. He felt that it was important that the Council makes sure that it is doing what is adequate for the community and then some. He did not believe that the City should be the sole agency responsible for building the library as this is a County library and serves more than the residents of Morgan Hill. However, in these economic times and huge cuts that the County is facing, he did not have hope that there would be funding from the County. Therefore, he felt that the Council needs to front load the cost of the library in order to get it constructed sooner, on the City's time schedule. He said that there may be commitments that the City can get from the County about backfilling these dollars at a later date or that they pay for the expansion at a later date. He noted that Council Member Chang has given suggestions on where additional funding can come from. It is his hope that the library committee will return with a timeline for the library that includes when and how the Council will discuss these dollars. He stated that he too is concerned about what the Council will be spending from tonight until June 2004 from Redevelopment Agency funds that will be spent and will not be available for this project. The sooner the Council has the discussion about where dollars will come from, the better off the City will be. He noted that the City would be meeting next week with the School District and that this would be a first step in deciding whether the Britton site is a potential site.

Mayor Pro Tempore Sellers indicated that the City is now in the planning phase for the indoor recreation center. He said that most of the cost for the planning for this center have either been committed or expended. Therefore, the difference where the center is now and where it will be in June will be minimal. He agreed that the City needs to look at interim steps and identify the funds as soon as possible. It was his belief that the sooner the Council/Agency identifies the funds; the better off the City will be as the community will have a clear sense of where the money will come from. However, he wanted to point out that there is no reason to halt progress of the indoor recreation center at this point because the funds have already been spent and the process is in place. He said that there may be some risks should the Council/Agency Board decides to make wholesale changes to the center as it would result in the redesign of the center. He was confident that this would not be the case. He noted that Council Member Chang pointed out that the City has other sources of funding and that it can change priorities, shifting funds over. He agreed that the Council/Agency Board needs to identify existing funds available and take a look at reallocation and/or stopping projects.

Mayor Kennedy requested that the City Manager take a look to see if there are any other possible sources of funding that can be earmarked for the library. He stated that he would not discount the private sector as there are some members of the community who have benefited greatly from the fact that they are in Morgan Hill. Perhaps, they may be willing and able to help close the gap if the City ends up short of funds.

Council Member Chang recollected that this issue was discussed when she was elected to her Council seat seven years ago. She said that she has a different view point now than she had seven years ago. She stated that she realizes that the downtown may be the best location for a library. She stated her preference of Mr. Garcia's site as it would take individuals to the downtown, noting that the City has talked about a Downtown Plan for years and that it would be a great asset to the downtown. She was not sure whether the City should construct the library on its own or whether it should be in partnership. She

suggested that the City look into the feasibility of purchasing the site from Mr. Garcia and that the City construct the library. This would result in the City owning the site at the end.

Council Member Tate thanked the Mayor, Council Members and everyone else who has helped in the work toward a library. He stated that he was pleased and appreciated that there is a spirit of cooperation and that everyone is pulling toward the same direction.

Action: *The Council **reviewed** the recommendations and **provided** the above comments.*

Redevelopment Agency Action

OTHER BUSINESS:

32. SELECTION OF EL TORO BREWING AS THE DEVELOPER FOR THE POLICE FACILITY

Director of Business Assistance and Housing Toy presented the staff report, indicating that the economic development subcommittee (EDS), consisting of Agency Members Carr and Tate, is recommending that the Agency Board select El Toro Brewing Company on the sole basis of the financial return to the Agency. However, the EDS is recommending that the exclusive right to negotiate have key milestones for performance and that these key milestones be tied to specific dates. Failure of the developer to perform in meeting the key milestones could be the basis for terminating the exclusive right to negotiate agreement by the Executive Director. Further, the EDS is recommending parameters for staff to negotiate this agreement.

Agency Member Carr thanked the two teams who submitted proposals and the time spent with the EDS. He said that both proposals were exciting ones. Along with staff, the EDS spent a considerable amount of time in the request for proposal process and in reviewing the proposals. The EDS also spent a lot of time coming up with ideas on how it would enter into discussions to compare and contrast the different proposals. He indicated that each project proposers were interviewed on two separate occasions and answered questions that arose. What it came down to was the financial return to the City and the goals of the downtown plan. He stated that the EDS felt both proposals met the goals of the downtown plan and that one had a better financial return than the other; that being the El Toro Brewing Company proposal.

Council Member Tate said that the notion contained in the staff report was that both proposals were equal in terms of their influence on the downtown. However, the EDS went through an evaluation process. He said that the El Toro Brewing Company has a single owner operator approach as opposed to the Page proposal which had a developer and an operator as separate entities. He felt that there were certain advantages when you have a single individual to deal with and that there are efficiencies associated with having to deal with a single operator. On the other hand, in looking at the Page proposal of having an operator who is not the developer, if the developer is not proceeding correctly and you need someone else to come in, you have the back up notion of a second party to deal with. He felt that these were offsetting issues. He said that it was the opinion of the EDS that the design of the El Toro proposal

was superior as this proposal plans to brew on site and incorporate the Poppy Jasper as well as other elements. The EDS felt that the Page Holding's project had a more realistic development cost and schedule built into their plan. This is one of the reasons the EDS is suggesting an aggressive schedule on the exclusive right to negotiate. The EDS felt that the Page proposal was a little bit more upscale and may fit the Morgan Hill image a little better in terms of the sample menus provided. They do not have as many games but is more of a dining experience. The EDS felt that the Page proposal, in terms of what they were setting out as their conditions going into the exclusive rights to negotiate, was a lot firmer in terms of the solid things that could be nailed down. With the El Toro proposal, there were notions that the City wants to get into the negotiation phase and that everything is open to negotiate. The EDS is trying to pin some of these down in the exclusive right to negotiate conditions being recommended. He noted that the Page proposal had an experienced operator who has been successful in one location and has learned how not to do it in another location. He indicated that these were some of the considerations that were made by the EDS but that the net overall was that both proposals were equal in terms of the impact to the downtown with a much better return to the Agency with the El Toro proposal.

Agency Member Chang stated that she was trying to understand how you would negotiate a higher purchase price if the project's economics supports such an increase.

Agency Member Tate said that the business plan presented by the El Toro proposal gave the combined owner/operator a rate of return on investment that was extremely high. This created a question of whether the El Toro proposer was paying enough for the building if he could achieve this kind of a return. He said that a normal rate of return for a restaurant might be approximately 20-25%

Mr. Toy addressed the rate of return. He said that in looking at the operating proforma over a five year period it was estimated at an internal rate of return of approximately 80¢ on the dollar per year and could be a little bit lower.

Chairman Kennedy said that some RDAs share in the high return. As it appears that the City is giving a bargain sales price, one way to negotiate an agreement is that if their return does in fact reach this level, the City shares in the return on investment.

Agency Member Tate indicated that sharing in the return on investment was not offered in the proposal but that it could be something to negotiate.

Chairman Kennedy opened the floor to public comment.

Rick Page stated his disappointed but appreciated the Council's consideration of his proposal. He said that he had no qualms with the process of the EDS and felt that the process was fair and unbiased. He stated that both proposals have set high expectations relative to the quality of the building that will ultimately become the northern gateway to the downtown and to the quality and the viability of the restaurant franchise. This is an important project to downtown business owners. He stated that he understands the short term financial process the City is under and that he knows the real and hard tradeoffs the City is grappling with. He stated that City staff sent out 60 solicitations of interests and

only received 3 proposals. Of the 3, only 2 had any significant restaurant experience and one of those dropped out because they could not see how the project could pencil given the construction costs and the start up costs of a restaurant. Of the 2 remaining proposals, the one being recommended this evening is the one that proposes \$800,000 less in investments and does not have significant restaurant start up or management experience. He felt that only time will tell whether this was the right or wrong proposal to have chosen. While he poses some series questions, the process has been fair and has yielded its results. It was his hope that his proposal helped raised the bar and made the decision difficult.

Rosy Bergin expressed concern about the high cost to renovate the police station into a brew pub. She identified examples of renovations that have failed: Station 55 in Gilroy; Barley and Hobbs in San Mateo; Fanny and Alexander's in downtown San Jose; the Old City Hall in Gilroy; and Stoddard's in Campbell. She stated that these were examples of restaurants that spent a lot of money changing a use. When you are talking about a high amount of dollars, it is difficult to stay in business longer than a couple of years when you have high costs to pay back as you have spent all your money on renovations. She felt that the City has this tremendous, well located, unencumbered asset with close to 50 parking spaces. She encouraged the Council to market the property to attract a well funded retailer in order to get top dollars for the property to add money to other RDA projects.

John Rick stated that he has studied and reviewed both the packages in detail and found both to be good solid plans. He addressed a concern raised by City staff in its recommendation to move forward with the El Toro proposal. He indicated that his CPA firm was requested, by the share holders of El Toro, to review and evaluate the business operations and the start up costs. He relied on industry data that was provided by the National Restaurant Association, and Robert Morris Associates. With the permission of two of his firm's clients, Florentine Restaurants and Hoagies, he was allowed to assimilate data that they prepared in developing and renovating other locations for their franchises. He previously reported back to the share holders that start up costs are well within a tolerable and achievable range. He said that a reason that restaurants fail is because they put too much into the project. He said that the projected costs are doable for this proposal. He found that the projected operations, especially the key determinants of seat turns and average ticket prices, are extremely comparable for south bay locations with similarly styled establishments.

Cindy Azevedo stated that it is interesting that both Rick Page and Pat Forest approached the family as their first choice to be their tenant at this location. She thanked them and expressed that interest rates are so low that her family would like to be the owner, developer and operator of this site. She indicated that the family's beer is currently being sold in 48 counties in California and is shipped to Wisconsin and Washington, D.C. She stated that she has visitors from throughout the United States as well as international visitors seeking her business because of the quality of their beers, indicating that visitors expect a restaurant as part of a micro brewery. She would like to provide this in the downtown. She stated that the family is dedicated to making the brew pub a success and act as catalyst to the downtown. She thanked the Council for this opportunity and for the recommendation of the EDS. She realized that the process has been long and hard but that in reality it will be a success. Their vision will be the best choice and that it is her hope that the City will choose to negotiate exclusively with her family so that they can open as soon as possible as it is her family's belief that theirs is the best option.

Anthony Tissot stated his support of the El Toro project for the police station site. Given the two proposals made, he felt that this one makes the best economic sense for the community as it is less money out of the City's pocket and with more money coming into its coffers. It was also his belief that it has the potential of becoming an icon within Morgan Hill. The proposal and the multi use capability will draw more foot traffic. He felt that this proposal would make the best economic sense and will do the most for the downtown's vitality.

Dan Kenney stated his support of the El Toro project as he reviewed the design and felt that it would compliment the downtown. He felt that the financial plan looks good. He noted that Mr. Acevedo is a local individual and that it would be nice to have a local company coming forward and building up the downtown. He recommended that the Council move forward with this project.

Geno Acevedo stated his appreciation of the recommendation of the EDS. He said that his financial information is contained within his business plan in great detail. He encouraged the Agency Board to review them in more detail to become confident of his numbers. It was mentioned that the City would want to share in profit. He said that this is negotiable; however, if the City wants to share in their profitability, the City would also have to share financially in their risk as well. He said that he spent a lot of time on the site with his architects and general contractor who provided him input. He stated that these numbers come from reliable and experienced individuals who have constructed restaurants from the ground up, including retrofitting buildings. He indicated that Stoddard's Sunnyvale brewing company is struggling through bankruptcy.

No further comments were offered.

Vice-chairman Sellers said that the City looked toward a restaurant for its residual benefit to the downtown. He said that other communities have public-private partnerships where the public entity gave some concessions in order to win a private benefit that ended up having significant community benefits. He said that the only premise to proceed with this proposal is attributable to the significant benefits that this type of a project will have in the gateway into town. He felt that this answers the question of why the City is giving \$650,000 and not more. He said that although the City has been thorough in looking at the financial plans, the City needs to look at design standards and uses. He said that several items were very attractive about the two proposals but that there were several items that were not as attractive. Some of those qualities were not things that he believed would contribute to the direction that the City would like to go in the downtown. He inquired what can be done or should be done to ensure that the design elements and the business concepts are going in the direction expected. He noted that there are other entities in the middle of the downtown that make a lot of money but are not necessarily desirable. He stated that he wanted to make sure that the business entity that enters at the front end of the community does not become one of these.

Mr. Toy said that the exterior renovations and the interior floor plans would be the standards that the El Toro Brewing Company would be held to. He indicated that the base line business terms would include renovations and what is expected to be received as a finished product.

Agency Member Carr said that key milestones were included so that time is not wasted and the proposal is delivered. The EDS did not want to get into a 120-day period where it becomes a different proposal than what was chosen by the City or that the City simply wasted 120-days only to find out that the project was not viable. He recommended that thought be given to strengthen this.

Vice-chair Sellers noted that the design and business concepts were not specifically referenced.

Agency Member Chang stated that it is possible that staff would figure out a way to get the return at a normal pace so that the purchase price can be higher.

Mr. Toy clarified that the project is 80% based on the business plan. He stated that there is an assumption of 3.5 table turns which could be higher or lower in the fifth year.

Agency Member Chang noted that Chairman Kennedy suggested that the City share in this portion of the profit. She inquired whether staff has seen this type of profit sharing example in any other community.

Mr. Toy said that there are other agencies that enter into a base ground lease and have a profit sharing base when certain thresholds are met. He stated that staff could take a lot at this and negotiate profit sharing.

Executive Director Tewes indicated that the proposal would have to inject more equity into the project should the costs go up. This would affect the rate of return significantly. He said that the EDS was clear in their recommendation that the minimum purchase is \$650,000 to the extent that the rate of return is affected by the operating assumptions or how much equity has to be injected. However, the \$650,000 is the minimum amount the City would receive.

Agency Member Chang understood that the City is trying to make this project work. However, to what extent is the City trying to make this project work? She said that last time the City looked at the value of the property; it was appraised close to \$1 million. In looking at some of the properties located in the downtown, she noted that some of the restaurants were being sold at over \$200 per square feet. She was trying to determine whether the \$650,000 was the correct purchase price. If the City is selling a piece of property lower than the market value dictates and gives the proposer an 80% return on their dollar, she did not believe that she would be treating the citizens of Morgan Hill fairly. She was looking at other suggestions other than the profit sharing portion.

Agency Member Carr said that approximately nine months ago, when the City made the decision to move the police department sooner than expected, the City had an opportunity for the building at this key corner to do something economically. The entire Agency Board was excited about the possibilities and the opportunity of some type of entertainment venue, maybe a restaurant. He noted that the Agency Board heard from many speakers that the building will need to be renovated significantly. If the City wants the use to be successful as a key corner of the downtown, perhaps it is not something that the City can generate market values for. Perhaps some things have changed and there are other things to consider at this point. He said that the process that the City went through was based upon the excitement

of the possibilities. He noted that it was mentioned that 60 statements of interest were sent out for this piece of property. The statements sent out not only include restaurants but went out to other retail users and was published in newspapers, magazines and trade journals. He noted that the City only received three interests, all of which were restaurants.

Agency Member Chang stated that the Agency Board talked about looking at return on investments for every benefit being done in the downtown at its recent goal setting session. She did not believe that the City has established a rate of return. She inquired as to the anticipated rate of return for this proposal.

Mr. Toy said that it was his understanding that the highest and best use for this property would be an office. He stated that renovations for an office would not be as extensive and would not require a lot of money initially. Therefore, more could be received for an office use. However, an office use would not be the catalyst project that the City is looking for in the downtown. An office use would not generate sales tax revenue where a restaurant use could generate \$20,000-\$30,000 in taxable sales. Restaurants would also bring individuals to the downtown area and would act as a catalyst where these individuals would spend money in the downtown. Office users would also patronize the downtown but there is a question whether the downtown would be a destination point. When you take all these factors into account, the EDS is not stating that this is the highest and best use. The EDS is stating that this is the best use to meet the goals of the downtown plan and has the opportunity to be a destination/catalyst for the downtown, and would generate taxable sales. This is why the proposer has to spend more money to renovate the building into a restaurant and thus have to pay less for the building. He indicated that the current office vacancy rate in the downtown is at approximately 20%.

Action: *On a motion by Mayor Pro Tempore/Vice-chair Sellers and seconded by Council/Agency Member Carr, the City Council/Agency Board unanimously (5-0) **agreed** to extend the meeting time to midnight.*

Agency Member Chang inquired whether the City could achieve higher than the \$650,000 price.

Mr. Toy said that in the exclusive rights to negotiate, detailed information would be provided in order to determine the numbers and what the rate of return would be.

Vice-chairman Sellers stated that this is a difficult decision. He was anxious and reluctant as the financials are not as strong as it would be if you look at all the different projects. However, the bigger concern he has is making sure that the City gets what it wants. Should the City place the property on the market to include retail and office use, with the current 20% office vacancy rate, he felt that the building would sit vacant for a long time. He said that the \$350,000 benefit that the City may receive on one end would be lost at the other end because the City would receive less sales tax and less development in the downtown. He felt that the City needs to factor this in. He stated that the City cannot be in a situation where things were not as described, extending out the process. He noted that there is a time issue involved and that he was anxious that the building remain vacant for any length of time. If it turns out that the City does not believe that the entity will be able to perform, this needs to be known at the front end and not risk having a vacant building a year from now. If there is any hesitation that there is an inability to perform, that this return to the Agency for reevaluation of the entire project as the City

cannot afford to drag out negotiations or take too many risks with someone who cannot perform. He stated that he would agree to proceed with the recommendation this evening based on these two thoughts.

Agency Member Chang said that there is \$1.2 million that may be needed for improvements. She inquired whether the EDS is recommending that the City lend funds for the improvements.

Agency Member Carr indicated that the proposal did not suggest any loans from the City.

Agency Member Tate indicated that the EDS was not following the \$1 million appraised value concept.

Agency Member Chang stated that she would support a maximum of a \$350,000 City investment. She noted that staff indicates that there may be \$20,000 - \$30,000 in sales taxes to the City from the restaurant use. Therefore, it would result in a 10-year payback period.

Mayor Kennedy indicated that the revenues could be greater if there was an agreement for profit sharing.

Agency Member Carr stated that the suggestions presented by Vice-chair Sellers were the intent of the EDS recommendation. He said that milestones and timing are important. He noted that the recommendation suggests that the Executive Director would report to the Agency. He did not want to get to the end of the 120-day period only to find out that this was not the right use and that the City would need to start all over again.

Vice-chairman Sellers said that his comments were not directed to making changes to the exclusive right to negotiate as it was to the negotiators themselves in giving direction to those who will be taking the lead in negotiations. If there is any hesitation, staff is to return to the Agency Board. Should the design criteria not be met, this warrants returning to the Agency Board as well. He stated that this was more of a direction as opposed to modifying the documents this evening.

Agency Member Carr stated that both sides on the negotiating table have heard Vice-chairman Seller's comments clearly and have heard the intent that the \$650,000 as being the minimum and that the EDS would take steps to take this cost higher.

Agency Member Tate stated that with these understandings, he would support staff's recommended actions.

Chairman Kennedy stated that this was a difficult decision. He felt that both proposals were excellent and that he would love to have both projects in the City. He was convinced that either proposal would succeed and that the El Toro project would be a good project for the downtown.

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Selected** El Toro Brewing to Enter into a 120 Day Exclusive Right to Negotiate (ERN) Agreement with Key Milestones for Performance.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Approved** the Parameters for Negotiation during the ERN Period.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Authorized** the Executive Director to Prepare, Negotiate, Execute, and Implement the ERN; Including Termination of the ERN for Failure to Meet Key Milestones.*

Action: *On a motion by Agency Member Tate and seconded by Agency Member Carr, the Agency Board unanimously (5-0) **Directed** Staff to Provide Regular Reports on the Status/Process of the ERN.*

City Council Action

29. COMMUNITY INDOOR RECREATION CENTER – RESULTS FROM COMMUNITY MEETING

Assistant Director of Public Works Struve summarized the comments received at the Parks and Recreation meeting held last night in a memo to the City Manager and distributed to the Council this evening. He indicated that 400 residents in the vicinity of the indoor recreation center were invited to see what would be taking place with the project and take their comments, noting that there was not a large representation of residents in attendance. Of those in attendance, their comments were primarily positive and that there was specific interest in a badminton court which will be part of the gym. There were some questions about the senior activities to which staff answered. He informed the Council that the next time the City would go to the public about the project would be as part of the CEQA process. He indicated that staff would be returning to the Council requesting that it open the public hearing for the CEQA process.

Mayor Kennedy opened the public comment. No comments were offered.

Mayor Pro Tempore Sellers commended staff for their efforts on the indoor recreation center. He indicated that one of the reasons the City received relatively few comments was attributed to the work done at the front end that included a lot of community meetings and outreach to the senior community and the youth entities. These meetings evolved to a degree that it satisfies the needs of these communities as well as the community as a whole. This front end work is a significant reason the process has become a lot smoother.

Action: *By consensus, the City Council unanimously **Received** Report on Public Meeting Held January 20, 2004 regarding Design of Indoor Recreation Center.*

27. CAPITAL FUNDS FOR DAYWORKER CENTER

Assistant to the City Manager Eulo presented the staff report, indicating that the dayworker committee has received building permits and secured a lease for the center. The dayworker committee has approximately \$150,000 of anticipated expenses associated with the move on. He informed the Council that the dayworker committee has not established itself as a separate entity from the Catholic Church and are working under the umbrella of the non profit designation of the Catholic Church. He indicated that the City has one contract for the operations with the Church and that the other contract for capital funds will soon be with the Church. The request before the Council would be for another \$50,000 CDBG contract to be with the Church. He indicated that the \$50,000 would come via a transfer of the current fiscal year's allocation from the Galvin Park improvement project to the dayworker center with the understanding that the Galvin Park improvement project would receive the \$50,000 in the next round of CDBG funding to return to the Council within a couple of months. Staff has determined that this will not cause a delay on actual improvements to the park.

Council Member Chang indicated that it was her understanding that the building would be moved to the site this weekend. She thanked the Council for making the dayworker center a reality to this point. She stated that she would not propose or vote for any further capital funding requests for this project.

Council Member Tate said that he wanted assurances that this is the last request for funding whether it be a loan or grant.

Mr. Eulo stated that the Council previously indicated that there would be consideration of a loan for the offsite improvements to Weston Miles. He indicated that a loan for the offsite improvements would return to the Council associated with the ultimate development of the site.

Mayor Kennedy opened the floor to public comment.

Julian Mancias thanked the dayworker center subcommittee for their hard work and for the Council's adoption of the interim use ordinance. He informed the Council that the dayworker center project does not have enough money. He stated that this project is close but that it needs additional help. He indicated that the dayworker committee will be actively pursuing funding and creating methods of fundraising to take care of this matter. The dayworker committee has agreed to do everything that the Council has requested, including working on an exit plan immediately. He said that it is his hope that this would be the last request for funding assistance.

Council Member Carr said that back in November, Mr. Mancias came before the Council asking for a change in the ordinance dealing with onsite improvements. At that time, Mr. Mancias indicated that the dayworker committee was \$50,000 short of proceeding with the center and that if the Council adopted an interim use ordinance, it would make up the difference. At that time, he asked a lot of questions and Council Member Chang provided information. He noted that Council Members have made fundraising calls to help make up the \$50,000. He noted that the Council approved the interim use ordinance this evening and that a couple of individuals spent a lot of time putting the ordinance together. Yet, this project is \$50,000 short and that this raises concerns. He stated that he needs to understand better the financing aspect associated with the project as it has been three months and the project is still where it

was after the City made a significant change to an ordinance and standards, especially for a use in the downtown.

Mr. Mancias informed the Council that plans to acquire funds did not come to fruition. He said that there were additional costs associated with the modular unit. He stated that it is his hope that some of these costs may be reduced through donations. He said that the \$50,000 is needed to make the project functional. If some of these costs can be reduced and the project does not need the entire \$50,000, the dayworker committee may be able to return the unused portion to the City.

Council Member Chang indicated that two reasons for cost escalations are attributable to the increase quote in relocating the modular units (increased from \$8,000 to \$58,000). She indicated that the dayworker committee had a goal of making \$30,000 at a fundraising event. However, only \$12,000 was raised at the New Year fundraising event. This resulted in the need to return to the Council for additional funding. She stated that she feels bad returning to the Council seeking additional funding.

Mayor Pro Tempore Sellers noted that Mr. Mancias mentioned that he is building up his enthusiasm and interest that there would be lower costs in terms of in kind services and fundraising efforts. He inquired whether it would be viable to consider a 12-month short term loan of these funds. He said that the CDBG funds go back to very significant needs in the community. If the funds could be used for the time needed for the project while generating/raising funds to pay back this loan, the City could use these funds for other community needs as well.

Mr. Mancias stated that he would love to receive money from the City and be able to pay it back. He did not believe that this was an unrealistic request and that it can be done. However, he expressed concern that the dayworker committee has to work on its three year exit plan and that this will involve putting money aside as the committee works on its fundraising efforts. He stated that he would be willing to present the loan option to the rest of the board for their consideration.

No further comments were offered.

City Manager Tewes noted that Mr. Eulo indicated to the Council that at an earlier Council meeting, it dealt with two separate issues: 1) onsite improvements and 2) offsite improvements. He noted that the Council is again discussing onsite improvements this evening. With respect to offsite improvements, the Council indicated an intent to lend the developer of the project, Weston-Miles, an amount of money to pay for certain of the offsite improvements which were required by the project but are considered to be attributable to the permanent use 3-5 years from now. Mr. Weston asked the City for the opportunity to lend him funds and that he would repay the funds later when the permanent use comes in. However, at that time, Mr. Weston advised the Council that some of the offsite items were not attributable to his project but were attributable to the dayworker project. Therefore, some of the loan would have to go the dayworker project and not just to the Weston-Miles project as Mr. Weston did not want to take responsibility for this cost. If the loan is appropriate, staff would return to the Council with the actual term of the loan documents that it authorized staff to negotiate. However, it may be conceivable that there may be a loan to the dayworker committee for their share of the offsite improvements that Mr. Weston did not believe were his.

Mr. Eulo clarified that the brief budget presented in the staff report does not count on getting an additional loan from the City for the onsite improvements. He stated that the vast majority of the costs associated with the offsite improvements are attributable to the permanent development of the site. He said that in conversations with Mr. Weston, he recognizes that everything between the sidewalk and the street is his obligation. He felt that less than 20% of the cost is attributable to the dayworker center. It was his belief that this 20% (approximately \$35,000) was calculated in the dayworker committee's budget as the developer has tentatively agreed to provide a lot of the onsite work that was part of the original onsite utility calculation.

Council Member Chang indicated that this amount was not incorporated into the dayworker committee's budget and that it will need to take a loan in the amount of \$35,000 as a next step.

Council Member Carr felt that more work was needed as the terms are still being negotiated. He said that more than a year ago, when the Council started talking about the dayworker center, it stated that it did not want to be the agency that solves this issue. Unfortunately, it was his belief that the Council would need to get deep into this in order to move forward with something that makes sense and moves the project forward. He suggested that the Council not take action on this item this evening. Further, that the Council ask that the request return as a complete plan instead of a piecemeal plan. He noted that this is something that he has requested before when the different pieces of projects are intertwined between the Granary and the Dayworker Center. He felt that the Council needs to think about the project as a whole and that this needs to come back to the Council.

Mr. Eulo informed the Council that the loan request would return to the Council once Mr. Weston receives the final cost estimates. It is his hope that this information will be obtained within the next week or two. He indicated that the reprogramming of funding will have to be approved by the Santa Clara County Board of Supervisors, noting that it takes a while to get on their agenda before any money can be spent. If delayed this evening, it may result in the request going into the next round of CDBG funds. This would result in funding not being made available until July 2004.

Mr. Toy indicated that reprogramming requires a public hearing. Following the public hearing, staff would forward the City's request to the County. He stated that the County has indicated that it would take two months to get the Board of Supervisors to approve the funding. Whether the Council takes action now or February 18, the Board of Supervisors would approve the request on April or May. July 1 is when a project would be eligible to use new CDBG funds. He said that the longer the Council waits to make a decision, the more sense it makes to apply for funding as part of the CDBG process.

City Manager Tewes suggested that the Council schedule a public hearing for February 18 and if the project is ready to go, the Council can proceed. If the project is not ready to proceed, a funding request would have to wait for next year's funding allocation.

Council Member Carr inquired whether staff has explored County CDBG funds versus the pass through that comes through Morgan Hill. He stated that it was his belief that the City of Los Altos applied for

and received County CDBG funds when he was sitting on the County's HCD Board. He noted that the County's CDBG funding application deadline is coming up.

Mr. Toy responded that staff has not investigated the feasibility of County CDBG funding. He said that when the City applies for funds, the City applies for funds that it has. He was not sure whether the dayworker committee explored other funding sources. Once the Council provides staff with direction this evening, staff would schedule a public hearing for the February 18, 2004 meeting. If the Council waits to take action on the item until the February 18, 2004 meeting, staff would not be able to schedule this item for public hearing until March or April 2004. The County would then consider the request sometime in mid-April or May 2004. They would be approving it at the same time they would be approving funding for Fiscal Year 2004-05. Therefore, acting on this item would only save the project a month's time.

Mayor Pro Tempore Sellers noted that the suggestion was to schedule the public hearing for February 18 Council meeting and deal with the whole issue then.

Council Member Carr requested that consideration be as a loan or that part of it be a loan versus reprogramming all of the CDBG funds as these monies come out of another program that will not get done.

Council Member Tate requested that staff perform tight tracking of the approval up to \$50,000 with no release of funds until receipts are reviewed to ensure that existing funds are being spent specifically for the line item being approved and that the expenses are as minimal as possible.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Directed** staff to schedule a public hearing for February 18, 2004.*

28. UPDATE ON MEDICAL SERVICES OBJECTIVES

Joseph Mueller apologized for the DePaul Management team as there was miscommunication. They were thinking in terms of presenting a written report as opposed to a presentation. They had scheduling conflicts and could not be in attendance this evening but that they would be in attendance at a February 18 meeting to make a presentation. He reported on the short term actions/objectives being pursued. Two cardiologists and a physical therapy group have signed leases to move into the medical office building. The recruitment of two internist has taken place. The first internist will move into the medical office facility initially while the second internist will move in as the first practice builds up as it is a husband and wife team. In the next six months, it is expected that the lab and radiology diagnostic will be in place via St. Louise Regional. The time share suite is being designed to be flexible. The suite should be ready within the next 60-90 days to have doctors occupy the facility. He stated that the Daughters of Charity are partnering with an assisted living center being proposed next to Cochrane Road and that an application should be submitted soon. He would be willing to answer questions this evening or responded to at the February 18 Council meeting. He indicated that a long term goal is to try and achieve an acute care facility within the next three years. He stated that after three years, there would be

re review, depending on the development of Coyote Valley on how the medical offices are doing, and how planning is proceeding for the main building. He said that a short term goal is to have the out services plan completed within the next six months and implemented in the next year or two. He indicated that the Daughters of Charity are actively working toward an urgent care facility. He noted that the urgent care facility is to be located in the old emergency room which will make a good walk in urgent care as an interim use.

Mayor Kennedy thanked Mr. Mueller for all his hard work with the Foundation and with the citizens advisory board on this project.

Action: *By consensus, the Council **Received** the Report with Recommendations from the Morgan Hill Community Health Foundation and DePaul Health Center.*

31. APPROVAL OF NEIGHBORHOOD TRAFFIC MANAGEMENT (TRAFFIC CALMING) POLICY

Director of Public Works Ashcraft presented the staff report.

Mayor Kennedy felt that this was a very thorough report and that he was encouraged by it. He felt that adopting the neighborhood traffic management calming policy would serve the community well.

Council Member Tate felt that this appears to be a very labor intensive process. In the age of the current budget constraints, he felt that the Council needs to be cautious in the labor intensive area. He indicated that the public input aspect of this issue was incredible. If you live in the Holiday Lake Estates area, you describe where you live by how many speed bumps you go over. Of the neighborhood e-mail list, it was his belief that 80% of the traffic on the e-mail list is about speed bumps.

Mayor Pro Tempore Sellers said that City streets are used as cut throughs for other areas and that there have been concerns raised. Being able to have these kinds of evaluation and elaborate on the options ends up being antedotal and almost mythical in terms of what the options are. He said that in his neighborhood, buses go through more and more and that they should not. He said that it was noted that one of the ways to do traffic calming is to allow for “speed lumps” so that vehicles with larger axels can get through but not the vehicles that exceed 40 miles per hour. He said that these are worth considering short term based on budget constraints. He felt that these issues need to be addressed now so that the City will have these in place when issues come up.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Mayor Pro Tempore Seller and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** the Neighborhood Traffic Management Policy.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:56 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY